TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200204038

OCT 30 2001

Uniform Issue List Number 402.08-05
4974.00-00

DA:E:EP:T4

Legend:

Individual A: =
Individual B: =
Employer D: =
Plan X: =
Plan Y: =
IRA #1: =

Dear

This is in response to your September 2, 1999, request for a private letter ruling, as supplemented by correspondence dated April 7, 2000; May 3, 2000; and January 4, 2001, concerning the tax treatment of certain transactions relating to Individual A's interest in the above named plans. The following facts and representations have been submitted in support of your ruling request.

Individual A was an active employee (though not a 5% owner within the meaning of section 416) of Employer D until the time of his death on May 11, 1999, at the age of 87. Employer D is the sponsor and administrator of both Plan X and Plan Y. As an employee of Employer D, Individual A was a participant in both Plan X and Plan Y until the time of his death. Under the terms of each plan, if a participant dies before his required beginning date, a beneficiary who is entitled to distributions as a result of the participant's death is required to receive a lump sum distribution of the participant's entire account balance on or before December 31 of the calendar year that contains the fifth anniversary of the participant's death. It is represented that Plan X and Plan Y were, at all times, in compliance with section 401(a) of the Internal Revenue Code.

The documentation you submitted with your ruling request indicates that Individual B had a one-quarter beneficial interest in the amounts standing to Individual A's account under Plans X and Y.

Shortly before his death, Individual A established an IRA, IRA #1, in his name. Pursuant to a beneficiary designation timely signed, Individual A named Individual B, Individual A's son, as the beneficiary of IRA #1. Immediately thereafter, Individual A executed and delivered to the trustee of Plan X and Plan Y written instructions to liquidate the assets in both accounts and effect a trustee-to-trustee transfer of one quarter of the funds to IRA #1, the balance of which

was to be transferred equally to three other IRAs, not the subject of this ruling request, for the benefit of Individual A's other children. Individual A's authorized representative has presented a copy of those written instructions as well as supplemental documentation that establishes that, prior to his death, Individual A had completed all steps necessary to effect such rollover and that the complete liquidation of all of his assets in both Plan X and Plan Y required no further action on his part. In addition, Individual A's authorized representative has submitted a copy of the IRA document which demonstrates that the IRA has no provision inconsistent with the exception to the five-year rule of section 401(a)(9)(B).

Pursuant to the instructions given by Individual A, the trustee of Plan X and Plan Y began to liquidate all assets in Individual A's accounts and effect the requested transfer. Documentation prepared by the trustee confirms that the majority of Individual A's assets in the above named plans had been liquidated prior to Individual A's death and that the pro rata share of the funds were, in fact, within two days of being transferred to the custodian of IRA #1. Before all the assets could be liquidated and the relevant portion subsequently directly transferred (rolled over) to IRA #1, however, Individual A died.

Based on the foregoing, you request the following rulings:

1. Pursuant to section 401(a)(31) of the Code, the terms of the Plans, and the Participant Distribution Election Forms signed by Individual A, the transfer of the pro rata share of Individual A's accounts under Plan X and Plan Y to IRA #1 will be a direct trustee-to-trustee transfer that will qualify as a rollover by Individual A under section 402(c) of the Code.

2. Individual B, as the identifiable beneficiary of IRA #1, will not be required to include in income for federal income tax purposes, during the year of transfer any portion, other than any required distributions under section 401(a)(9), of Individual A's interest in Plan X or Plan Y that is transferred to IRA #1.

3. Under the exception to the five-year rule contained in section 401(a)(9)(B)(iii) of the Code, distributions from IRA #1 may be made starting in either 2001 or a calendar year subsequent to 2001, the year after the year of transfer, over the life expectancy of the designated beneficiary, Individual B.

With respect to your ruling request, Code section 402(c)(1) provides, generally, that if any portion of an eligible rollover distribution from a qualified retirement plan under section 401(a) of the Code is transferred into an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.

Code section 402(c)(4) defines "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of an employee in a qualified trust except the following distributions:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made –

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a period of 10 years or more, and

(B) any distribution to the extent the distribution is required under section 401(a)(9), and

(C) any hardship distribution described in section 401(k)(2)(B)(i)(IV).

Code section 402(c)(8)(B) defines an eligible retirement plan as:

(i) an individual retirement account described in section 408(a),

(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

(iii) a qualified trust, and

(iv) an annuity plan described in section 403(a).

Code section 401(a)(31)(A) provides, in short, that a plan qualified within the meaning of Code section 401(a) must provide that a distributee of an eligible rollover distribution must be given the option of having such distribution transferred, by means of a trustee-to-trustee transfer, to an eligible retirement plan.

Code section 401(a)(31)(B) provides that subparagraph (A) shall apply only to the extent that an eligible rollover transfer would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402(c) and 403(a)(4)).

Code section 401(a)(31)(C) provides that for purposes of section 401(a)(31), the term "eligible rollover distribution" has the meaning given by section 402(f)(2)(A). Section 402(f)(2)(A) refers to section 402(c).

Code section 401(a)(31)(D) provides, generally, that for purposes of section 401(a)(31), the term "eligible retirement plan" has the same meaning given such term by section 402(c)(8)(B).

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question & Answer A-3, provides, generally, that a direct rollover that satisfies section 401(a)(31) is an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of the distributee. A direct rollover may be accomplished by any reasonable means of direct payment to an eligible retirement plan. Reasonable means of direct payment include, for example, a wire transfer or the mailing of a check to the eligible retirement plan. Q&A A-3 also provides, in relevant part, that in the case of an eligible retirement plan that does not have a trustee (such as a custodial individual retirement account or an individual retirement annuity), the custodian of the plan or issuer of the contract under the plan, as appropriate, should be substituted for the trustee for purposes of this Q&A-3, and Q&A-4 of this section.

Code sections 401(a)(9)(A)(i) and (ii) and 401(a)(9)(C) provide that the entire interest of each employee under a plan to which the required minimum distribution rules apply must be distributed no later than than April 1 of the calendar year following the calendar year in which

the individual attains age 70½ (the required beginning date) or, in general, must be distributed beginning not later than the required beginning date in accordance with regulations over the life of the employee or over the lives of the employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

Under sections 401(a)(9)(C)(i) and (ii), an employee's required beginning date is the later of the date under the above paragraph or the year in which the employee retires, provided that the employee is not a 5% owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70½ .

Code section 401(a)(9)(B)(iii) provides, in summary, that, where an employee dies before distribution of an employee's interest has begun in accordance with subparagraph (A)(ii), required distributions to the employee's designated beneficiary may be paid over the designated beneficiary's life (or life expectancy) as long as distributions begin no later than 1 year after the date of the employee's death.

The proposed regulations under section 1.401(a)(9)-1 provide that distributions to a designated beneficiary may begin no later than December 31 of the calendar year following the calendar year after the date of the employee's death and still comply with section 401(a)(9)(B)(iii).

Notice 89-42, 1989-1 C.B. 683, provides, in relevant part, that a participant in a qualified retirement plan who is not a 5-percent owner may delay receiving required distributions until April 1 of the calendar year in which he retires.

Code section 401(a)(9)(E) of the Code defines the term "designated beneficiary" as any individual designated as a beneficiary by the employee.

Regulation section 1.401(a)(9)-1, Q&A D-2A(a) of the Proposed Income Tax Regulations states, in part, that only individuals may be designated beneficiaries for purposes of section 401(a)(9) of the Code. A person who is not an individual, such as the employee's estate, may not be a designated beneficiary.

Section 408(a) of the Code defines an individual retirement account as a trust which meets the requirements of sections 408(a)(1) through 408(a)(6). Section 408(a)(6) of the Code provides that under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

With respect to your first ruling request, while the information submitted substantiates that Individual A, prior to his death, had taken every step which he could take to effectuate the intended trustee-to-trustee transfer of a portion of the amounts standing to his credit under Plans X and Y to IRA #1, the actual transfer of the assets did not take place prior to his death. Although not explicitly stated in either Code section 402(c), Code section 401(a)(31), or the regulations promulgated thereunder, a valid rollover, even if intended to be accomplished as a direct transfer as that term is defined in Code section 401(a)(31), necessitates the actual transfer of plan assets occur during the lifetime of the employee for whose benefit the plan account is maintained and for whose benefit the IRA is established As noted above, said actual transfer did not occur with respect to Individual A's interests in Plans X and Y.

Thus, with respect to your first ruling request, we conclude as follows:

The rollover requirements of Code section 402(c) have not been satisfied, and the proposed transfer of assets from Plans X and Y to IRA #1 would not qualify as a direct trustee-to-trustee transfer as that term is defined in Code section 401(a)(31).

With respect to your second ruling request, and consistent with the above, if a portion of the amounts standing to Individual A's credit under Plans X and Y are transferred to IRA #1, the individual entitled to receive said amounts, which the documentation submitted indicates would be Individual B, will be required to include them in income pursuant to Code section 402(a), as amounts distributed from a qualified retirement plan not subject to rollover, during the calendar year in which said amounts are distributed from the Plans and payable to said recipient.

With respect to your third ruling request, because the transfer of assets from Plan X and Plan Y to IRA #1 will not qualify as a direct trustee-to-trustee transfer under section 401(a)(31) and 402(c), and therefore are not eligible for the exception to the five-year rule found at section 401(a)(9)(B)(iii), this ruling has no significance.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

John G. Riddle, Jr.

John G. Riddle, Jr., Acting Manager
Employee Plans Technical Group 4
Tax Exempt and Government Entities Division

Enclosures:
Notice of Intention to Disclose
Deleted copy of letter